

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

JOSEPH LOMASCOLO, on behalf of)
himself and all others similarly situated,)
)
Plaintiffs,)
)
v.)
)
PARSONS BRINCKERHOFF, INC., *et al.*,)
)
Defendants.)
_____)

No. 1:08cv1310 (AJT/JFA)

ORDER

This matter is before the Court on the Joint Motion to Approve the Settlement Agreement (Doc. No. 162) and the Magistrate Judge's Proposed Findings of Fact and Recommendations (Doc. No. 197).

On April 27, 2009, the Joint Motion to Approve the Settlement was referred to the United States Magistrate Judge, pursuant to 28 U.S.C. § 636, to conduct hearings and file a report and recommendation. On May 8, 2009, a hearing was held before Magistrate Judge John F. Anderson. At that hearing, Judge Anderson ordered the parties to serve a copy of the settlement agreement on all Plaintiffs. Thereafter, certain Plaintiffs filed objections to the settlement agreement and/or filed stipulations for voluntary dismissal pursuant to Fed. R. Civ. P. 41(a). A second hearing was held before Judge Anderson on June 19, 2009. After that hearing, Judge Anderson issued Proposed Findings of Fact and Recommendations on June 23, 2009, in which he recommended that this Court find the settlement agreement to be a fair and reasonable resolution of a bona fide dispute over Fair Labor Standards Act ("FLSA") provisions as required

by *Lynn's Food Stores v. United States*, 679 F.2d 1350 (11th Cir. 1982). Judge Anderson further recommended that Plaintiffs Connie Joslin-Culver, Dennis Culver, Robert Farner, Terry L. Farner, Elise Keaton, Elaine Libby, Thomas Libby, James O'Connor and Ira Simmons be permitted to voluntarily dismiss their claims without prejudice. Judge Anderson ordered counsel for the Plaintiffs to provide a copy of his Proposed Findings of Fact and Recommendations to each individual Plaintiff and advised the parties that objections to the Proposed Findings of Fact and Recommendations must be filed within ten (10) days.

Counsel for the Plaintiffs caused a copy of the Proposed Findings of Fact and Recommendations to be served on each individual opt-in Plaintiff by email or mail on June 24, 2009. The Court subsequently received letters and/or notices of voluntary dismissal from a small number of Plaintiffs. The Court has construed the letter received on June 23, 2009, from Everett Sharp as an objection to the Proposed Findings of Fact and Recommendations issued by Judge Anderson. The remaining letters do not contain objections to the Proposed Findings of Fact and Recommendations issued by Judge Anderson.

At the hearing before this Court on September 4, 2009, this Court addressed several pending requests by certain Plaintiffs to voluntarily dismiss their claims or opt-out of the lawsuit. The Court granted the requests for voluntary dismissal by Connie Joslin-Culver (Doc. No. 169), Dennis Culver (Doc. No. 171), Elise Keaton (Doc. No. 173), Thomas Libby (Doc. No. 201), Ira B. Simmons (Doc. No. 175), Kurt Cordner (Doc. No. 170), Kevin C. Fuqua (Doc. No. 172), Rick MacAllister (Doc. No. 178), Robert Farner (Doc. No. 199), Terry Farner (Doc. No. 200), Elaine Libby (Doc. No. 174) and James O'Connor (Doc. No. 202) pursuant to Fed. R. Civ. P. 41(a) and dismissed without prejudice the claims of Connie Joslin-Culver, Dennis Culver, Elise Keaton,

Thomas Libby, Ira B. Simmons, Kurt Cordner, Kevin C. Fuqua, Rick MacAllister, Robert Farner, Terry Farner, Elaine Libby and James. *See Order (Doc. No. 233).*

The Court denied Plaintiffs' Amended Motion Requesting Voluntary Dismissal by Certain Plaintiffs (Doc. No. 214) as to the named Plaintiff Joseph Lomascolo. *See Order (Doc. No. 234).* The Court also granted Plaintiffs' Amended Motion Requesting Voluntary Dismissal by Certain Plaintiffs (Doc. No. 214) as to Everett Sharp, Joy Sharp, Thomas Cavnar, Robert Evans, Robert Hitchcock, Richard Coe, Kassandra Evans, and Benjamin Ryan pursuant to certain conditions, and ordered that their claims would be dismissed if Plaintiffs filed a written statement indicating that they wished to have their claims voluntarily dismissed without prejudice pursuant to the conditions set forth in this Court's September 8, 2009 Order. *See Order (Doc. No. 234).* None of the Plaintiffs that were listed in this Court's September 8, 2009 Order filed any written statement with this Court in response to that Order. Accordingly, pursuant to the terms of the September 8, 2009 Order, the Court has now denied Plaintiffs' Amended Motion Requesting Voluntary Dismissal by Certain Plaintiffs in its entirety. *See Order (Doc. No. 236).*

Upon consideration of the Joint Motion to Approve the Settlement Agreement (Doc. No. 162) and the Magistrate Judge's Proposed Findings of Fact and Recommendations (Doc. No. 197), the letters and notices of voluntary dismissal filed by the Plaintiffs, and the parties' supplemental memoranda, and for the reasons stated in open court on September 4, 2009, it is hereby

ORDERED that the objection of Everett Sharp (Doc. No. 198) be, and the same hereby is, OVERRULED; it is further

ORDERED that the Proposed Findings of Fact and Recommendations (Doc. No. 197) be, and the same hereby is, ADOPTED; it is further

ORDERED that the Joint Motion to Approve the Settlement Agreement (Doc. No. 162) be, and the same hereby is, GRANTED; and it is further

ORDERED that, in light of this Order and the Court's rulings on Plaintiffs' requests for voluntary dismissal, the parties are directed to submit a revised and final version of the Settlement Agreement and Schedule of Payments, listing only those individuals who remain as Plaintiffs, together with a proposed Stipulation and Order of Dismissal on or before October 7, 2009.

The Clerk is directed to forward copies of this Order to all counsel of record.



Anthony J. Trenga
United States District Judge

Alexandria, Virginia
September 28, 2009